

**Shaffee v Miser**

2014 NY Slip Op 33264(U)

March 14, 2014

Supreme Court, Bronx County

Docket Number: 305190/12

Judge: Wilma Guzman

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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX**

Index No. 305190/12  
Motion Calendar No. 23  
Motion Date: 1/22/14

SHAMELA SHAFTEE

Plaintiff,

-against-

**DECISION/ ORDER**

**Present:**

**Hon. Wilma Guzman**  
Justice Supreme Court

PARAMANAND L. MISER, SHARMILA NANDA  
MISER, MARY SINGLETON, and LATINA A. BIAS

Defendants.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for summary judgment:

<u>Papers</u>	<u>Numbered</u>
<b>Notice of Motion, Affirmation in Support,</b>	
<b>Exhibits Thereto.....</b>	<b>1</b>
<b>Affirmation in Opposition .....</b>	<b>2</b>
<b>Reply Affirmation .....</b>	<b>3</b>

*Upon the foregoing papers and after due deliberation, and following oral argument, the Decision/Order on this motion is as follows:*

Defendants Parmanand L. Misir and Sarmila Nanda Misir move this court for summary judgment on the grounds that no liability lies on behalf of these defendants.

Plaintiff commenced this action seeking damages for injuries allegedly sustained as the result of a Shamela Shaffee was a passenger in the vehicle operated by Sarmila Misir and owned by Parmanand Misir.

Latina Bias testified that she was operating the vehicle owned by defendant Singleton. She drove the vehicle down Rockaway Boulevard and turned on to 122<sup>nd</sup> Street, which was a one lane road. She brought her vehicle to a stop at the intersection of 116<sup>th</sup> Street. There were no traffic control signals on 116<sup>th</sup> Street, which was a two lane road with lanes in each direction. There were no vehicles in front of her at the stop sign. There was a van parked on the corner to her right which she testified obstructed her view. As she inched into the intersection she looked right. There was

a vehicle approaching from the left, which struck her vehicle. She did not observe this vehicle prior to the impact. Defendant Bias applied her brakes lightly when she observed the other vehicle upon her.

Sharmila Misir testified that she was operating the vehicle in which plaintiff Shafee traveled. Here vehicle was on 116<sup>th</sup> Street, which had no traffic signal. There was a stop sign on 122<sup>nd</sup> Street. As she crossed 122<sup>nd</sup> Street she looked left and did not see any vehicles approaching. A vehicle came from 122<sup>nd</sup> Street and she heard screeching tires. The Misir vehicle was struck on the drivers side.

Defendant Miser alleges that defendant Bias violated V.T.L. §1142(a) in that she failed to stop at a stop sign. A motorist is entitled to believe that another vehicle would stop at a stop sign and yield the right of way to a vehicle already in an intersection pursuant to Vehicle and Traffic Law §§ 1172 and 1142(a). McCain v. Larosa, 2007 WL 1845611; Perez v. Brux Cab Corp., 251 A.D. 2d 157 (1<sup>st</sup> Dept. 1998). Bisogna v. Economos, 42 A.D.3d 347 (1<sup>st</sup> Dept. 2007). Contrary to the facts of Rivera v. Berrios Trans Service Inc., 64 A.D.3d 416, (1<sup>st</sup> Dept. 2009) and Navaro v. S.R.M. Management Corp., 58 A.D.3d 295(1<sup>st</sup> Dept. 2008), Defendant Miser did not have a stop sign in front of her on 116<sup>th</sup> Street, and as such there is no question as to whether or not plaintiff should have yielded the right of way.

Ms. Bias testified that she looked right prior to inching out into traffic, her view being obstructed by a parked vehicle. However, V.T.L. 1142(a) requires any vehicle approaching a stop sign to yield the right of way to traffic. Of note, is Ms. Bias testimony and the testimony of plaintiff Miser that there was no traffic signal in the direction which Ms. Miser traveled. Defendant Miser had the right of way and is entitled to the presumption that defendant Bias would yield such. Perez v. Brux Cab Corp., 251 A.D.2d 157 (1<sup>st</sup> Dept. 1998).

Furthermore, pursuant to C.P.L.R. § 3116(a) this Court reviews all depositions, as if they had been signed, regardless of any untimeliness of such.

Accordingly, it is

ORDERED that defendant Parmanand Miser and Sharmila Miser's motion for summary judgment is hereby granted and the plaintiffs complaint and any cross-claims dismissed as to defendant Parmanand Miser and Sharmila Miser only. It is further

ORDERED that the Clerk is directed to enter a judgment in favor of the plaintiff against the defendants Mary Singleton and Latina Bias. Upon the completion of discovery and the payment of the appropriate fees the Plaintiff is directed to file the Note of Issue upon which this matter will be placed on the trial calender on the issue of damages only. It is further

ORDERED that plaintiff shall serve a copy of this Order with Notice of Entry upon all parties within thirty (30) days of entry of this Order.

This constitutes the decision and Order of the Court.

3/14/14

DATE



HON. WILMA GUZMAN  
Justice Supreme Court